

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN - 7 1993

In the Matter of

Policies and Rules Concerning  
Children's Television Programming

Revision of Programming Policies  
for Television Broadcast Stations

MM Docket No. 93-48  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

REPLY COMMENTS OF

CENTER FOR MEDIA EDUCATION, AMERICAN ASSOCIATION OF  
SCHOOL ADMINISTRATORS, ASSOCIATION FOR LIBRARY SERVICE  
TO CHILDREN/AMERICAN LIBRARY ASSOCIATION, CENTER FOR  
THE STUDY OF COMMERCIALISM, PEGGY CHARREN, CONSUMER  
FEDERATION OF AMERICA, COUNCIL OF CHIEF STATE SCHOOL  
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ASSOCIATION, NATIONAL ASSOCIATION FOR BETTER  
BROADCASTING, NATIONAL ASSOCIATION OF CHILD ADVOCATES,  
NATIONAL ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS,  
NATIONAL ASSOCIATION FOR FAMILIES AND COMMUNITY  
EDUCATION, NATIONAL BLACK CHILD DEVELOPMENT INSTITUTE,  
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## SUMMARY

The record in this proceeding shows that Commission action is necessary to ensure that broadcasters meet their responsibilities under the Children's Television Act. Numerous studies document the inadequacy of the broadcasters' efforts to date. Nor, as the broadcasters claim, is Commission action premature. While we are pleased that some broadcasters have responded to public pressure by promising to air more educational programming in the future, continued oversight is needed to ensure that broadcasters meet their responsibilities to children.

Therefore, we again urge the Commission to adopt both the core programming approach and processing guidelines. "Core" programming should be defined as regularly-scheduled, standard-length programming that is primarily designed to educate and inform children and aired at appropriate times for children. This definition would help broadcasters understand what is expected of them and should lead to an increase in educational programming, thus furthering Congressional intent. The proposed definition does not mean, contrary to the broadcasters' claims, that core programming has to be dry, didactic, or boring. Moreover, specials, short-segments, and programming with a secondary educational purpose would still be considered as contributing to a broadcaster's service to children, but should not be counted as "core."

The Commission should establish a processing guideline to reward stations that air substantial amounts of "core"

programming with a presumption of compliance with the CTA, while allowing those that do not meet the guideline to show that they have complied "through their overall programming," as permitted by the Act. Given that the purpose of the CTA is to increase the amount of educational and informational programming available to children, and the fact that children watch on average, four hours of television each day, the processing guideline should be set at no less than one hour per day, or seven hours per week. Neither the CTA's legislative history nor the First Amendment prohibit the use of processing guidelines.

Finally, the record in this proceeding demonstrates the need

for the Commission to require broadcasters to identify the

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Center for Media Education, American Association of School Administrators, Association for Library Service to Children/American Library Association, Center for the Study of Commercialism, Peggy Charren, Consumer Federation of America, Council of Chief State School Officers, Dr. Vincent Hutchins, MD, MPH, International Reading Association, National Association for Better Broadcasting, National Association of Child Advocates, National Association of Elementary School Principals, National Association for Families and Community Education, the National Black Child Development Institute, Inc., National Council of La Raza, National Education Association, and National PTA,<sup>1</sup> hereby submit the following reply comments in response to the Notice of Inquiry (hereinafter "Notice") in the above-captioned proceeding released March 2, 1993, through their attorneys, the Institute for Public Representation.

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<sup>1</sup> See CME's Initial Comments for a description of each co-signer, with the exception of the International Reading Association, Inc. The Association is a professional nonprofit organization, which promotes literacy worldwide.

In general, the Comments filed in this proceeding are remarkably polarized. Nearly every industry commenter<sup>2</sup> rejects the Commission's view that compliance with the Children's Television Act<sup>3</sup> could be improved, and oppose each and every proposed remedy as unnecessary, with promises that things will improve next season. On the other hand, researchers and representatives of the viewing public, such as CME,<sup>4</sup> observe an appalling lack of compliance by broadcasters, and find no reassurance in the empty promises made in many of these filings.

Overall, the broadcasters' objections to the Notice are unreasonable and overblown. Their emotional outcry against the

~~regulatory definition and associated guidelines~~

licensee's public trust obligation to serve its child audience. The CTA already requires that each and every licensee air "specifically designed" educational children's programming as a condition of license renewal. CTA § 103(a)(2); 47 U.S.C. §§ 303b(a)(2). The Commission's Notice properly seeks to clarify and enforce that preexisting requirement.

The FCC has both the authority and the obligation to fully enforce the CTA's mandates. We applaud the Commission for beginning to take those obligations seriously.

~~7. Section 103(a)(2) of the CTA requires that each and every licensee air~~

The PTA's monitoring project revealed that less than 1% of the broadcast hours on the four local network stations were devoted to educational or informational children's programming (between 1/2 and 2 hours per week, out of a total broadcast week of 168 hours.) PTA at 2-3. The recent, systematic examination of renewal filings conducted by Dr. Dale Kunkel of the University of California at Santa Barbara, reveals similarly low numbers. See generally Comments of Dr. Dale Kunkel. Dr. Kunkel's review, based on a sample of 48 stations which filed for renewal in 1992, found that the average station claimed to provide 3.4 hours per week of regularly scheduled "specifically designed" programming. Id. at 3-4. However, Kunkel notes that this figure includes such dubious educational fare as "Teenage Mutant Ninja Turtles," "GI Joe," and "The Jetsons," and cautions that "[i]t seems doubtful that . . . a majority of the programs listed by stations as educational would be rated as such by academic experts." See Kunkel at 4, 6 and Table 2. Overall, Kunkel concludes that the broadcast industry has failed to fulfill the obligations to the child audience created by the CTA. Id. at 7.

Also problematic is Kunkel's finding that many stations did not even comply with existing FCC regulations. Twenty-one percent of the stations surveyed listed no "specifically designed" educational programming whatsoever, while 29 % failed to comply with the Commission's minimum reporting requirements by not listing the time, date, duration and brief description of each claimed program. Id. at 3, 6. Only 12 % of the non-

broadcast efforts claimed by licensees bore any resemblance to those authorized by the CTA and the Commission's regulations. Id. at 6. Kunkel further concluded that the vague, imprecise, and inconsistent nature of most of the claims offered made review of the educational claims difficult if not impossible. See Kunkel at 7; see also Comments of the Center for Research on the Effects of Television ("CRETV") at 9-10, raising similar concerns. These studies validate and confirm the findings made in CME's September 1992 Report on station compliance, which we filed with our initial comments.

According to the comments submitted in this proceeding, only one of the three major networks has created and aired a regularly scheduled program "specifically designed to serve children's educational or informational needs" in response to § 103(a)(2) of the Act: "Name Your Adventure" on NBC, launched in September 1992.<sup>6</sup> ABC claims credit only for short-form segments and the occasional special, ABC at 4-8, while CBS claims only "Schoolbreak Special" and "Disney's the Little Mermaid," CBS at 12 and note 16.<sup>7</sup>

All of the networks promise that they will air new educational programs for children in the fall. See Comments of

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<sup>6</sup> NBC Comments at 3, 13. "Saved by the Bell," the other program claimed by NBC was developed and aired prior to the Act's passage, not in response to the Act, although it may still "count" for purposes of license renewal. Id. at 12, note 9. NBC also mentions a third program, K-TV, which it apparently canceled and replaced with something called "News 4 Kids." Id. at 12-13.

<sup>7</sup> For a discussion of Fox's offerings, see supra at 12-13.

CBS at 9-13; ABC at 10, note 10; Fox at 11-12. It appears that this flurry of commitments has occurred only as a direct response to public pressure, Congressional attention, and the Commission's recent statements that it intends to enforce the CTA more seriously. Unless the Commission acts now to clarify and strengthen its rules, there is no guarantee that these new shows will in fact make it on to the fall schedule, or be renewed (or replaced with better programs) in future seasons.

Curiously, while touting their present and future compliance with the Act, the broadcasters also insist that "it is simply premature" for the Commission to take any action," NBC at 2, and urge the Commission to "give the Congressional intentions and scheme [more] time to work." NAB at 21; see also NBC at 18.<sup>8</sup> This is nonsense. The CTA was enacted over two and a half years ago, after years of debate, and included a grace period of an entire year for licensees to acquire new programming which complies with the law. According to CBS, it takes only "a year or two from initial concept until a program is ready for stations to air." CBS at 13.<sup>9</sup> Furthermore, according to comments filed

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<sup>8</sup> This argument also flatly contradicts the assertions of overall compliance made above. Either the broadcasters are presenting plenty of educational programming and the Commission's observations to the contrary are flat wrong, or they are not presenting enough educational programs and need more time to comply. Which is it?

<sup>9</sup> Fox asks the Commission to further delay any new definitions until the 1994-95 season. Fox at 11. Such a delay would be unconscionable. By then, Fox will have aired almost four full years of broadcast television since enactment of the CTA, 99% of it non-educational. Congress already gave broadcasters a full year to comply, by making the law effective



education programming is adequate to fulfill the mandate of the CTA.

As several commenters and others have observed, the FCC's initial rulemaking decisions helped to create this state of affairs. See, e.g., Kunkel at 2; APA at 2-3.<sup>12</sup> The FCC's current regulations are so lax that stations can claim almost anything as educational and informational. Licensees have little incentive to purchase, produce, and promote quality educational shows if rerunning "The Jetsons" is enough to earn renewal. See,

Kunkel at 2; OFPM at 10-11. Only prompt enforcement

purpose service to the educational and informational needs of children, with the implicit purpose of entertainment, rather than the converse." Notice at ¶8 (emphasis in original).

This clarification would alleviate much of the confusion exhibited by Fox and others, and provide a simple test whereby broadcasters can easily distinguish between shows like "Winnie the Pooh" and "G.I. Joe." See Comments of Haley, Bader & Potts, at 16-17.<sup>14</sup> Similarly, broadcasters may continue to list adult-oriented shows such as "Sixty Minutes" if they do in fact educate older children;<sup>15</sup> however, these programs are not "specifically designed" for children and therefore must be identified as "overall" programming.

NBC and others complain that such a decision "would create a terrible false dichotomy -- that is, that programs that entertain cannot be educational -- . . ." NBC at iv.<sup>16</sup> However, it is this assertion which creates the false dichotomy. Neither the Commission nor CME, nor any other public interest commenters are

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<sup>14</sup> Far from forcing the Commission into "the position of censor," as Haley et al. postulate, the new test does not censor anything. All it does is encourage broadcasters to list only shows that are truly designed to educate children. If a licensee believes that "G.I. Joe," "Wonder Years," or any other program meets the statutory definition, and can support that assertion, it is free to claim the show on its renewal application as "specifically designed" educational programming under the CTA. The Commission will, as in many other contexts, defer to the licensee's judgment, unless that judgment is unreasonable.

<sup>15</sup> See Joint Comments of Cannell Communications, et al. at 10-12.

<sup>16</sup> See, e.g., Comments of ABC, Inc. at ii, Fox Children's Network at 3-4; Disney at 11.

proposing any such thing. We all know that educational programs should also be entertaining, and that a well-designed program need not sacrifice either goal. See, e.g., Comments of ABC at 9-10 ("Sesame Street" is a perfect example of an educational program which makes ample use of entertainment techniques").<sup>17</sup> In fact, "Sesame Street" itself disproves the assertion that educational programs must all be dry and boring, as claimed by some industry representatives. See id., Disney at 9. With continued pressure from the Commission, other networks and independents may soon follow CTW's example and devote their much vaunted "creativity" to meeting this challenge.

The fact that an educational program may simultaneously entertain kids does not mean that it cannot qualify as "core" programming, as many commenters seem to imply.<sup>18</sup> To the contrary, CME et al. believe that programs such as "Sesame Street," and other programs that meet the standards described by ABC -- "a program plan that specifies an educational goal and that is implemented with the advice of educational experts" -- would also meet a "primary purpose" standard. See ABC at 9.<sup>19</sup>

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<sup>17</sup> Of course, if the commercial networks would only create and broadcast quality programs like "Sesame Street," there would be no need for this FCC action. Unfortunately, they have chosen not to do so.

<sup>18</sup> See, e.g., ABC at 9, Disney at 2-8.

<sup>19</sup> CME supports the proposals of Children's Television Workshop ("CTW") and others to require specific, written "curricula" or educational goals for each program, and that program effectiveness be field-tested and verified. CTW at 8; see also ABC, and Fox. However, we caution that merely hiring a panel of experts is not necessarily an imprimatur of quality

If the program is also entertaining, featuring "music, rhyme, fantasy and bold graphics," id., so much the better. There is no question that education and entertainment can coexist. However, the CTA requires that emphasis be placed on the former goal, as the "specifically designed" requirement indicates.

The comments filed by Fox Children's Network provide an example of why a primary purpose test is needed. Fox claims that its entire children's schedule qualifies as "specifically designed" because "[I]n the overall context of entertainment, all of our programming includes elements that are designed to teach children . . . to feel good about themselves." Fox at 2-3.<sup>20</sup> Yet, Fox admits that its programs would not meet the "core" programming test. Id. at 4. The fact that a program may contain an element designed to make children "feel good about themselves" does not convert that program into one "specifically designed to meet [children's educational and informational] needs" as required by CTA § 103(a)(2). Nor does this claim comply with Congressional intent.<sup>21</sup>

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educational programming. The Commission's "primary purpose" requirement might accomplish similar results at less cost.

<sup>20</sup> As examples, Fox cites "X-Men," an animated comic strip featuring mutants battling each other, claiming that its "overall theme . . . teaches how limiting society's or individuals' lack of tolerance for differences can be." Fox at 3. Similarly, it claims that "Dog City," "a cartoon within a cartoon[,] is intended to encourage creativity and imaginative thinking." Fox at 3.

<sup>21</sup> Fox's claim that its programs are indistinguishable from certain programs listed in the legislative history, Fox at 3-4, should also be rejected. It is obvious to anyone who has watched the programs that "The Smurfs," which the Senate Report describes

Capital Cities/ABC argue that the Commission need not adopt a "primary purpose" test, because the existing "specifically designed" standard is adequate. ABC at 9-10.<sup>22</sup> This is somewhat true in that any program which specifically designed to educate children should inevitably have education as a primary purpose. The problem is that broadcasters are claiming a wide variety of programs as specifically designed to educate and inform children that clearly were not designed for that purpose and do not fulfill that purpose.<sup>23</sup> Clarifying that "specifically designed" means programming that is primarily

intended to educate children will provide useful guidance to broadcasters and should put an end to such outrageous claims.<sup>24</sup>

Disney and others argue that instead of requiring qualifying shows to have education as the "primary purpose," the Commission should "defer[] to a broadcaster's reasonable good faith judgment that a significant purpose of a program is educational."

Comments of Disney at 11; CBS at 20, 34; Westinghouse at 7; Hogan & Hartson at 13-14. Disney claims that this would "relieve broadcasters of the difficult task of discerning whether the entertainment value of a clearly educational show is less than, rather than equal to, the educational value." Disney at 11. CME et al. believe that "primary" is better than "significant."

Both terms will require broadcasters to exercise their good faith judgment in applying the definition. The "significant" purpose test however, is much more open to debate, however, and would encourage broadcasters to claim programs with only minimal educational value to children.

In sum, the unreasonable claims made by broadcasters demonstrate that the Commission must provide more guidance as to the definition of programming "specifically designed" to educate

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<sup>24</sup> NAB argues that broadcasters are merely "guilty of overkill," submitting renewal applications "with a 'throw in

and inform children. We believe that defining programs "specifically and primarily designed to educate or inform children" as "core" programming is a workable means to encourage broadcasters to air more truly educational and informative programs, as contemplated by Congress.

**2. "Core" Programs Should be Standard-Length and Regularly Scheduled.**

CME et al. strongly supports the proposal to incorporate the existing standard-length programming requirement into the "core" definition, as do many other commenters. See CBS at 6-7, APA at 3-4, PTA at 5, 8, NYSDDED at 2; Westinghouse at 2.<sup>25</sup> As Westinghouse notes, such formats are very common, fit easily into network or syndication schedules, and can be regularly scheduled and announced in advance, to attract the maximum numbers of viewers. Westinghouse at 2-3. Those commenters who urge that short segment programming is more beneficial to children<sup>26</sup> are misinformed. In fact, research in this area indicates that short segment programming "diminishes learning opportunities and outcomes for children." See Comments of APA at 2-3. On the contrary, experts have found that children learn best when they

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<sup>25</sup> See also CTW at 14, supporting the standard-length requirement but also urging "significant, albeit lesser credit" for short segments. We vehemently disagree with commenters who propose that the Commission abandon the standard-length programming requirement established in its 1991 Report and Order, 6 FCC Rcd 5093, 5100 (1991), as urged by WTTE at 3-4 and Named State Broadcasters Associations at 9.

<sup>26</sup> See, e.g., ABC at 3-4; NBC at 35-36; Fox at 5; Tribune at 8-9.

can focus on a concept for an extended period and when a single idea is presented and reinforced repeatedly, as long as the concept is presented at an appropriate developmental level. Id.; Comments of NAEYC at 1; CRETV at 8; Levin at 3, 13-15. As the Commission recognized in its Reconsideration Order in 1991,<sup>27</sup> standard-length programming is the best educational vehicle for such learning.

In addition, as Kunkel notes, it is difficult to quantify the total number of minutes devoted to short segment efforts and/or PSA's for comparison and renewal purposes. Kunkel at 5. Similarly, measuring their effectiveness is problematic, since the audience is constantly changing, and they cannot be regularly announced or scheduled in advance. Therefore, parents may find it difficult to locate such programming. Overall, the value of such efforts is dubious.

Several networks commented that the "core" definition should not require shows to be regularly scheduled, since specials can be an effective way to serve children's educational needs. See ABC at 6-8. While this may be true, CME et al. disagree that specials are as valuable as weekly programs.<sup>28</sup> For the reasons described above, predictability and regularity are important both to children's educational success and to parental control over

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<sup>27</sup> August Order, 6 FCC Rcd 5093, 5101 (1991).

<sup>28</sup> In addition, Kunkel found that the total amount of time devoted to such programming was negligible: an average of 12 "specifically designed" minutes per week. 44% of stations reported no such programming. Kunkel at 4 and Table 7. As such, these shows do not add much to the overall picture.

what their children will watch. Unless a program is regularly scheduled, its potential audience cannot find it, and it cannot develop the kind of regular audience which is attractive to both stations and advertisers.<sup>29</sup> CME et al. strongly endorse the Commission's proposal to include only regularly-scheduled programming in its definition of "core" children's programming.

3. **"Core" programs should be aired at appropriate times and on weekdays as well as Saturday mornings.**

Finally, CME et al. urges the Commission to include time-of-day and weekday requirements in its definition of "core" qualifying programs. Accord, CTW at 13 (time); CRETV at 7, 11 (both); PTA at 8 (time); NAEYC (both). As revealed by several comments in this proceeding, many otherwise qualifying shows are aired at 5:30 or 6 a.m., when they do not have an opportunity to educate many children or to build higher ratings. See NAB Appendix D at 2, 4; PTA Schedule 2. Tribune Broadcasting has even submitted Arbitron figures showing that the child audience is much larger in mid-morning than at 6:00 a.m. Exhibit A to Tribune Comments. If the Commission allows all educational programs to be aired at 6 a.m., it runs the risk of creating an educational "ghetto" in the unprofitable early morning hours. This would fly in the face of Congressional intent, which was to ensure a wide variety of educational options for children.

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<sup>29</sup> The assertion that "parents know" when the children's block: is on is absurd; most of "the children's block" consists of animated cartoons with little educational content. The goal here is to identify educational programs, not simply cartoons.

CME also takes issue with Tribune's assertion that credit should be given for shows that reach de minimum numbers of children. Tribune at 9-10. The reality is that if few children are in the audience, few children are being served. As the broadcasters assert in other contexts, children cannot be educated by programs which they do not watch, no matter how entertaining their format. The Commission can encourage age-appropriate scheduling by simply adding this element to its review of renewal filings and/or any guideline it adopts.

In addition, the studies done by Kunkel and by the South Florida PTA revealed that many broadcasters air no educational programming whatsoever on weekdays, but crowd it all into Saturday mornings. See Kunkel at 7 (only 50 % aired anything on weekdays); PTA at Schedule 2 (100% of children's programs aired in the Saturday morning block). Indeed, ABC presents evidence that only 10% of stations affiliated with the three major networks broadcast any children's programming whatsoever on weekdays in the after school time period, 3-6 p.m. ABC at 18, note 21 (56 out of 563 network stations). Such "blocking" of all shows on Saturday mornings is imbalanced and acts to limit viewer options. The Commission should rectify this problem by requiring that stations spread out their educational programming throughout the week and throughout the day, not just in the early morning timeslots.

**B. The Commission should adopt a Staff Processing Guideline of At Least One Hour a Day of "Core" Programming.**

It is clear from this proceeding that the quantity of children's educational programming on the air has fallen well below that of past decades, and that the CTA's enactment has not significantly increased these numbers. Dr. Dale Kunkel's survey found that stations presented an average of 3.4 "specifically designed" hours per week in 1992. Kunkel Comments at 3-4.<sup>30</sup> The South Florida PTA's survey found a maximum of two hours of regularly scheduled programming, with one station as low as 1/2 hour per week, totaling less than 1 % of the four local stations' total programming hours. PTA at 3 and Schedule 3.

By comparison, stations aired between 2.6 and 2.8 hours twenty years ago, long before the CTA was enacted. Kunkel at 6.<sup>31</sup> At the time, the Commission characterized these amounts as "so low as to demonstrate a lack of serious commitment to [station's] responsibilities . . . in this area." 1974 Policy Statement at 6. In 1989, the Senate found "disturbingly little"

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<sup>30</sup> In addition, it must be remembered that these self-reported numbers are often inflated by the addition of non-qualifying entertainment and general audience programming. As both Kunkel and the PTA note, many shows claimed as "specifically designed" to educate/inform are of doubtful educational content. Kunkel at 6-7; PTA at 4-5; see also CME Report, submitted with our initial comments; Notice at 4.

<sup>31</sup> See also Television Programming For Children: A Report of the Children's Television Task Force, Vol. 3, 4-5 (1979); Notice of Proposed Rulemaking In the Matter of Children's Television Programming and Advertising Practices, 75 FCC 2d 138, 143 (1979).

educational programming on the air, and passed the Act to "increase the amount of educational and informational broadcast television programming available to children." Senate Report at 7, 1 (emphasis added). Unfortunately, very little increase has occurred since 1989.

Thus, although CME et al. strongly endorses the Commission's processing guideline proposal, we cannot recommend that it be set as low as one or two hours per week, as suggested by some commenters. See Notice at ¶9; Comments of Tribune at 12-14 (suggesting a two-hour "safe harbor"); INTV at 10 (same); CTW at 11-13 (one hour or ten percent of a station's entertainment programming aimed at children); Children's TV for the Nineties (unspecified percentage).<sup>32</sup> This is not nearly enough. Given that many stations are already airing two to three hours per week, as the Kunkel and PTA studies suggest, the Commission's guideline should be substantially higher, in the neighborhood of seven to ten hours per week. Rather, CME et al. reiterate our earlier position that any guideline be set at one hour per day, or seven hours per week.<sup>33</sup> The average child watches TV 28

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<sup>32</sup> In addition, several of these commenters propose that only one hour of "core" programming should be enough. See, e.g., CTW at 12; INTV at 10. Such a suggestion is ludicrous. If the CTA is to have any effect at all, it must encourage broadcasters to raise their current levels of service to children, not lower them.

<sup>33</sup> NAEYC's proposal is similar to CME's in advocating that any guideline be at least seven and one-half hours, divided evenly between three target age groups and aired on weekdays as well as Saturday mornings. See NAEYC at 2; NYSED at 2; CRETV at 11 (proposing at least one program per station per day).

hours each week. and the average low-income child even more -- un

renewal filings.<sup>34</sup> Under the proposed guidelines, broadcasters who air many high quality educational shows will be rewarded by prompt renewal. Licensees are free to exceed the guidelines, and receive no penalty for doing so.

As for the "ceiling" argument, this is a red herring. The Commission has demonstrated its ability to revise children's broadcasting policies several times in the last twenty years. Should the guidelines effectively create a "ceiling" someday in the future, the Commission can reconsider their effectiveness at that time. As the Supreme Court has stated, "[i]f experience . . . indicates that [Commission policies] have the net effect of reducing rather than enhancing the volume and quality of coverage, there will be time enough to reconsider the constitutional implications." Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969). At the moment, however, the Commission and the public face precisely the opposite problem -- a shortage of educational children's programming. If processing guidelines can help rectify this shortfall, then they are worth a try.

**1. Processing Guidelines are not barred by the CTA's legislative history.**

Those who insist that the CTA does not permit the Commission to adopt a staff processing guideline misread the CTA's